

JAMES M. LAWNICZAK (Ohio Bar No. 0041836)  
NATHAN A. WHEATLEY (Ohio Bar No. 0072192)  
CALFEE, HALTER & GRISWOLD LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 622-8200  
Facsimile: (216) 241-0816

Attorneys for Benecke-Kaliko AG

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: Delphi Corporation, et al.,	:	Chapter 11
	:	
Debtors.	:	Case No. 05-44481 (RDD)
	:	Jointly Administered
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**RESPONSE OF BENECKE-KALIKO AG TO DEBTORS' SEVENTEENTH OMNIBUS  
OBJECTION TO CLAIM NO. 9080**

Benecke-Kaliko AG ("Benecke"), by and through its attorneys, hereby submits the following response to the Seventeenth Omnibus Objection of Delphi Corporation and certain of its subsidiaries and affiliates (the "Debtors") to claim no. 9080 (the "Objection"). In support of its response, Benecke states that it possesses an unsecured claim against the Debtors in the amount of \$66,748.15, as reflected in its proof of claim, filed July 6, 2006 (the "Proof of Claim"). Moreover, Benecke states that the Debtors have failed to produce any evidence in support of their objection to Benecke's Proof of Claim.

**Substantiation of amount of claim 9080**

On July 6, 2006, Benecke filed its Proof of Claim against debtor, Delphi Automotive Systems, LLC, identified as claim no. 9080. Therein, Benecke asserted a claim totaling

\$66,748.15 in unsecured claims. On June 15, 2007, the Debtors filed their Objection, requesting that the Court modify claim no. 9080 by reducing Benecke's total claim to \$53,024.14.

While the Debtors have offered no justification for their objection or any evidence to substantiate the proposed claim reduction, the amount of the proposed reduction equals \$13,724.01. This is precisely the amount of invoice number 20275622, which was attached to the Proof of Claim. A true and accurate copy of invoice no. 20275622 is attached hereto as exhibit A, along with true and accurate copies of the bill of lading, packing slip, and proof of delivery of the goods identified on the invoice. Therefore, to the extent that the Debtors are objecting to Benecke's claim on the basis of allegedly not receiving the goods reflected in invoice no. 20275622, their objection is meritless and must be denied.

**The Objection fails for lack of evidence**

The Debtors objection must also be denied for its failure to offer any evidence or justification for the proposed claim reduction.

11 U.S.C. § 502(a) states that a claim or interest, proof of which is filed under section 501 of title 11, is deemed allowed, unless party in interest objects. *11 U.S.C. § 502(a)*. However, Federal Rule of Civil Procedure 3001(f) provides that a proof of claim executed and filed in accordance with the bankruptcy rules shall constitute prima facie evidence of the validity and amount of the claim. *Fed. R. Bankr. Proc. 3001(f)*.

It is undisputed that, on July 6, 2006, Benecke filed its Proof of Claim and supporting documents with the Court. Therein, Benecke set forth the bases for its unsecured claim, totaling \$66,748.15, against the Debtors. Neither the timeliness, content, nor validity of the Proof of Claim, or the documents filed in support of the Proof of Claim, have been challenged by the Debtors.

In their June 15, 2007, Objection, the Debtors challenge Benecke's claim as stating "the incorrect amount" or as "overstated". See *Seventeenth Omnibus Objection at 17*. However, the Debtors have failed to offer any evidence in support of this allegation. Because the Debtors have failed to offer any evidence to support their Objection in the face of Benecke's claim, their Objection should be denied by the Court. Cf., *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039 (9th Cir. Ariz. 2000) (Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." Therefore, to defeat a proof of claim the objecting party must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.")

WHEREFORE, Benecke respectfully requests that the Court deny the Objection to the Benecke's claim no. 9080, and enter an order allowing Benecke's unsecured claim in the amount of \$66,748.15.

Respectfully submitted,

/s/ James M. Lawniczak  
James M. Lawniczak (Ohio 0041836)  
Nathan A. Wheatley (Ohio 0072192)  
CALFEE, HALTER & GRISWOLD LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, OH 44114  
Telephone: (216) 622-8200  
Facsimile: (216) 241-0816  
Email: jlawniczak@calfee.com  
nwheatley@calfee.com

Counsel for Benecke-Kaliko AG.

### **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing response has been filed electronically this 12th day of July, 2007, with the U.S. Bankruptcy Court for the Southern District of New York. Notice of this filing will be sent via electronic mail to all parties who have entered an appearance by operation of the Court's electronic filing system. Additionally, copies of the foregoing were served via regular U.S. Mail, proper postage pre-paid, upon the following parties:

Delphi Corporation  
Attn: General Counsel  
5725 Delphi Drive  
Troy, MI 48098

John Wm. Butler, Jr.  
Skadden, Arps, Slate, Meagher & Flom LLP  
333 West Wacker Dr., Suite 2100  
Chicago, IL 60606

Kenneth S. Ziman  
Simpson, Thacher & Bartlett LLP  
425 Lexington Ave.  
New York, NY 10017

Donald Bernstein  
Brian Resnick  
Davis Polk & Wardwell  
450 Lexington Ave.  
New York, NY 10017

Robert J. Rosenberg  
Mark A. Broude  
Latham & Watkins LLP  
885 Third Ave.  
New York, NY 10022

Bonnie Steingart  
Fried, Frank, Harris, Shriver & Jacobson  
LLP  
One New York Plaza  
New York, NY 10004

Alicia M. Leonhard  
Office of the United States Trustee  
33 Whitehall St., Suite 2100  
New York, NY 10004

/s/ James M. Lawniczak  
One of the Attorneys for Benecke-Kaliko  
AG